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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 6718-LA3/70. *Dated, Trivandrum, 1st November 1970.*

The following Bill together with the Statement of Objects and Reasons, and the Financial Memorandum is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. Prasannan,
Secretary,
Legislative Assembly.

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THE KERALA CULTIVATORS AND TENANTS (TEMPORARY PROTECTION) BILL, 1970

A

BILL

to provide for the stay of suits and other proceedings for determination of rights in respect of lands occupied by certain classes of persons, for the temporary protection of tenants against proceedings for the recovery of arrears of rent and for matters incidental thereto

Preamble.—Whereas it is expedient to provide for the stay of suits and other proceedings for determination of rights in respect of lands occupied by certain classes of persons, for the temporary protection of tenants against proceedings for the recovery of arrears of rent and for matters incidental thereto.

BE it enacted in the Twenty-first Year of the Republic of India as follows:—

1. *Short title, extent, commencement and duration.*—(1) This Act may be called the Kerala Cultivators and Tenants (Temporary Protection) Act, 1970.

(2) Save as otherwise expressly provided in this Act, it extends to the whole of the State of Kerala.

(3) It shall come into force at once and shall cease to have effect on the 16th day of October, 1971.

(4) Upon the expiry of this Act, the provisions of section 4 of the Interpretation and General Clauses Act, 1125 (VII of 1125), shall apply as if this Act had then been repealed by an Act of the Kerala State Legislature.

2. *Interpretation.*—Words and expressions used in this Act shall have the meanings respectively assigned to them in the Kerala Land Reforms Act, 1963 (1 of 1964).

3. *Stay of suits and other proceedings for determination of rights in respect of lands occupied by certain classes of persons.*—(1) Notwithstanding anything to the contrary contained in any other law, or in any judgment, decree or order of any court, where in any suit or proceedings in respect of any application or appeal or revision or review or proceedings in execution of any decree or orders (including proceedings incidental or ancillary thereto) or other proceedings, in respect of any land, pending before any court or land Tribunal or appellate authority or other authority or officer at the commencement of this Act, or instituted or filed or initiated

after such commencement, any party thereto has filed or files a statement in writing that he was in occupation of such land at the commencement of the Kerala Land Reforms (Amendment) Act 1969, and—

(a) that such land is situate in Malabar and that he or his predecessor-in-interest was continuously in occupation of such land honestly believing himself to be a tenant for not less than two years within a period of twelve years immediately preceding the 11th day of April, 1967; or

(b) that such occupation was on the basis of a registered deed purporting to be a lease deed and that he or his predecessor-in-interest was in occupation of such land on the 11th day of April, 1957, on the basis of that deed,

the court or Land Tribunal or appellate authority or other authority or officer, as the case may be, shall not proceed with that suit, appeal, revision, review or other proceedings, as the case may be.

(2) Nothing contained in sub-section (1) shall apply in any case where the party who has filed or files the statement referred to in that sub-section is admitted to be a tenant of the land to which that statement relates.

4. *Stay of suits, applications, etc., for arrears of rent.*—(1) Notwithstanding anything to the contrary contained in any other law, or in any contract, or in any judgment, decree or order of any court or Land Tribunal, with effect on and from the commencement of this Act,—

(a) no suit or application or other proceedings for the recovery of arrears of rent in respect of a holding or part of a holding accrued due before the 1st day of May, 1968;

or

(b) no application for, or proceedings in, execution of a decree or order for the recovery of such arrears of rent or other application or proceedings incidental or ancillary thereto,

shall lie in any court or Land Tribunal; and all suits, applications and other proceedings for recovery of such arrears of rent and all proceedings in execution of decrees or orders for recovery of such arrears of rent and other proceedings incidental or ancillary thereto, pending in courts or Land Tribunals at the commencement of this Act, shall stand stayed.

(2) All appeals against decrees or orders relating to arrears of rent in respect of a holding or part of a holding accrued due before the 1st day of May, 1968, and all revisions against decrees or orders relating to such arrears of rent, pending in any court or appellate authority at the commencement of this Act, shall stand stayed, and no court or appellate authority shal proceed with any such appeal or revision filed after such commencement.

5. *Stay of certain applications*:— (1) Notwithstanding anything contained in section 13C of the Kerala Land Reforms Act, 1963 (1 of 1964), all proceedings pending in any court at the commencement of this Act, in respect of any application filed or purported to have been filed under that section, shall stand stayed.

(2) Notwithstanding anything to the contrary contained in any judgment or order of any court, all proceedings pending in any court or Land Tribunal at the commencement of this Act, in respect of any application filed or purported to have been filed under sub-section (2) of section 45A of the Kerala Land Reforms Act, 1963 (1 of 1964), shall stand stayed.

6. *Limitation.*—In computing the period of limitation for the institution of suits, applications or other proceedings prohibited under this Act, the time during which such suits, applications or other proceedings were prohibited under this Act and under the Kerala Stay of Recovery of Arrears of Rent Ordinance, 1970 (18 of 1970), shall be excluded.

7. *Exemption.*—Nothing in this Act shall apply in respect of any lease or tenancy exempted from the provisions of the Kerala Land Reforms Act, 1963 (1 of 1964), by section 3 thereof.

8. *Repeal and saving.*—(1) The Kerala Stay of Recovery of Arrears of Rent Ordinance, 1970 (18 of 1970), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had commenced on the 17th day of October, 1970.

STATEMENT OF OBJECTS AND REASONS

In V. N. Narayanan Nair and others Vs. the State of Kerala, reported in 1970 Kerala Law Journal, 638, a Full Bench of the Kerala High Court held that section 29A, section 32 in so far as (and only in so far as) it bars a civil court from prohibiting a person who has made an application for determination of fair rent from entering on the land to which the application relates so long as the application is pending, section 45A, sub-section (2) of section 50A, section 73, the Explanation to sub-section (1) of section 85 and sub-section (7) of section 125 of the Kerala Land Reforms Act, 1963, as amended by the Kerala Land Reforms (Amendment) Act, 1969, are void. As a result of the invalidation of section 73, section 13C of the Act has become unworkable. Steps are being taken to file an appeal against the above judgment in the Supreme Court.

2. It is considered that the invalidation of section 29A, section 32, sub-section (2) of section 50A, the explanation to sub-section (1) of section 85 and sub-section (7) of section 125 may not vitally affect the interests of the tenants and kudikidappukars or at present create any serious difficulty in the implementation of the Act. But the position with regard to sections 13C, 45A and 73 is different.

3. Section 73 provides for relief to tenants in respect of the arrears of rent accrued due before the 1st May 1968. Section 45A confers rights on the tenants to insist on the appropriation of the rent paid by them after the 19th May, 1967, for the period commencing on the 1st May, 1966. Section 13C provides for cancellation, on deposit of the amount of rent liable to be paid under section 73, of certain court sales in execution of rent decrees. Now that sections 45A and 73 are invalidated and section 13C has become unworkable, the courts and Land Tribunals will proceed to determine the rights and liabilities of landlords and tenants in respect of arrears of rent accrued due before the 1st May, 1968, as if section 73 is not in force. In that case, the tenants will be liable to pay the full rent to their landlords for the period allowed under the Limitation Act. Further, pending applications under section 13C for cancellation of court sales and under sub-section (2) of section 45A for re-appropriation of rent, will be dismissed. Such a situation will cause great hardship to the tenants. If they are made liable to pay the full arrears of rent, it may not be possible to effectuate the agrarian reform envisaged in the Act. It was therefore proposed to give temporary protection to the tenants pending decision of the Supreme Court.

4. As the Legislative Assembly was not in session, the Kerala Stay of Recovery of Arrears of Rent Ordinance, 1970 (18 of 1970) was promulgated by the Governor on the 17th October, 1970, for the above purpose. It is necessary to replace the Ordinance by an Act of the Legislature.

5. A Full Bench of the Kerala High Court by its majority judgment rendered in A. S. 116 of 1964 on the 21st October, 1970, invalidated section 7 and sub-section (1) of section 7B of the Kerala Land Reforms, Act, 1963 as amended by the Kerala Land Reforms (Amendment) Act, 1969, which sought to deem certain categories of cultivators as tenants. Steps are being taken to file an appeal against that judgment also in the Supreme Court. Pending decision of the Supreme Court, it is proposed to give temporary protection to such cultivators by staying all suits and other proceedings for the determination of the rights in respect of the lands occupied by them.

6. The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill if enacted and brought into operation would not involve any expenditure from the Consolidated Fund of the State.

BABY JOHN